[DE] Cologne Higher Regional Court confirms ban on integration of ARD media library into private offerings

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In its judgment of 27 February 2026, the Cologne Higher Regional Court (*Oberlandesgericht Köln* – OLG Köln) (Case No. 6 U 75/25), ruled that a private streaming provider may not integrate the media library of the state broadcasters that make up the German Association of Public Service Broadcasters (*Arbeitsgemeinschaft der öffentlich-rechtlichen Rundfunkanstalten der Bundesrepublik Deutschland* – ARD) into its offering without permission.

Since at least 31 January 2025, the defendant's streaming platform had included, among other things, a visually prominent section entitled "ARD *Mediathek*" (ARD media library) under the heading "*Mediatheken*" (media libraries). The "ARD Mediathek" section contained an offering compiled by the defendant itself, which was modelled on the ARD media library, contained a large number of videos from the ARD media library and was constantly adapted to the stock of videos stored in the ARD media library. Videos were not opened within the ARD media library by means of what the defendant referred to as "embedding", but in the defendant's player.

The legal dispute concerns the admissibility of the defendant's use of the ARD media library and thus, according to the court, questions relating to the rights of database producers, the German Interstate Media Treaty (*Medienstaatsvertrag* – MStV), trademark law and ancillary copyright protection under competition law. In its decision, the OLG Köln extended the ban previously issued by the Regional Court of Cologne (*Landgericht Köln* – LG Köln) (Case No. 14 O 82/25).

In addition to the injunctive relief already granted by the LG Köln in respect of an infringement of the ancillary copyright to which the plaintiffs were entitled as database producers, the OLG Köln granted a further claim in relation to the use of metadata. The ARD media library is a database protected under Section 87a of the German Copyright Act (*Urhebergesetz* – UrhG), the creation and operation of which would fall under the rights of database producers even if it were only a collection of links or a type of electronic programme guide. In view of ECJ case law, according to which the use of a database as a source of information may be permissible, for example by linking, searching or processing its content, the OLG Köln ruled that accessing data for the purpose of comparing it with a competing database or creating a "clone" offering was not covered. Taking over essential

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parts of a competitor's media library, in particular linking videos and taking over metadata, also infringed the rights of the database producer regardless of whether the content was freely accessible, technical protection measures existed and the database was publicly funded. With regard to extending the injunctive relief to metadata contained in the media library, the OLG Köln stated that the plaintiffs had demonstrated repeated and systematic reproduction of metadata belonging to the videos stored in the media library.

Furthermore, following their appeal, the plaintiffs were granted injunctive relief with regard to the marketing of the ARD media library and its content-related and technical changes due to infringements of Section 80(1)(1) and (3) of the Interstate Media Treaty (*Medienstaatsvertrag* – MStV). The OLG stated that the aforementioned provisions should be considered as protective laws that protected the editorial and technical integrity as well as the marketing sovereignty of the providers of broadcast-like telemedia. Unlike the LG Köln, the OLG Köln had no concerns that the application of Section 80(1)(1) and (3) MStV, which protected marketing sovereignty, would lead to the undermining of the principles of copyright.

In addition, the granting of injunctive relief based on trademark law by the LG Köln was upheld by the OLG Köln. The use of the designations "ARD Mediathek", "Das Erste" and the suffix "/ard" in the post-domain path should be considered as use as a trademark likely to lead to misrepresentation of origin and confusion. It was undisputed that the signs "ARD" and "Das Erste" were widely recognised and comprehensively protected as company logos and trademarks.

Finally, the LG Köln's judgment was amended with regard to the applicants' claims under unfair competition law, which had been dismissed. The OLG Köln upheld a supplementary claim for injunctive relief under competition law pursuant to Sections 8(1), 3(1) and 4(3)(a) of the German Act against Unfair Competition (*Gesetz gegen den unlauteren Wettbewerb* – UWG) due to avoidable (indirect) misrepresentation of origin. This was based on the fact that the imitation of the ARD media library by the streaming provider was likely to deceive users about its operational origin and thus about the fact that it was the original product. The parallel assertion of unfair competition claims in addition to copyright and trademark claims was permissible.

In summary, the defendant was therefore prohibited in the preliminary injunction proceedings from reproducing, publicly displaying, marketing, altering the content of or technically modifying essential parts of the ARD media library (including metadata) and from using the protected signs and trademarks in the course of trade.

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Link zur Pressemitteilung des OLG Köln

https://www.olg-koeln.nrw.de/behoerde/presse/004_zt_letzte-pm_archiv_zwangs/001_letzte_pressemitteilung/index.php

Link to the press release of the Cologne Higher Regional Court

https://www.olg-koeln.nrw.de/behoerde/presse/004_zt_letzte-pm_archiv_zwangs/001_letzte_pressemitteilung/index.php

Link zum Urteil des OLG Köln

https://nrwe.justiz.nrw.de/olgs/koeln/j2026/6_U_75_25_Urteil_20260227.html

Link to the judgment of the Cologne Higher Regional Court

https://nrwe.justiz.nrw.de/olgs/koeln/j2026/6_U_75_25_Urteil_20260227.html

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